

10683  
RECORDATION NO. .... Filed 1425

*July 27 1979 - 1 40 PM* CRAVATH, SWAINE & MOORE

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INTERSTATE COMMERCE COMMISSION ONE CHASE MANHATTAN PLAZA

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CC Washington, D. C.

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INTERSTATE COMMERCE COMMISSION

July 27, 1979

*Charles Bryant*

RECEIVED  
JUL 27 1 32 PM '79  
I.C.C.  
FEE OPERATION BR.

Conagra, Inc.  
Lease Financing Dated as of May 1, 1979  
10% Conditional Sale Indebtedness due 1999  
[CS&M Ref.: 4876-007]

Dear Sir:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of Conagra, Inc., for filing and recordation counterparts of the following documents:

1. (a) Conditional Sale Agreement dated as of May 1, 1979, among Exchange National Bank of Chicago, as Trustee, and Railway Marketing Corporation and Pullman Incorporated (Pullman Standard Division), as Builder; and

(b) Agreement and Assignment dated as of May 1, 1979, among Railway Marketing Corporation and Pullman Incorporated (Pullman Standard Division), as Builder, and La Salle National Bank, as Agent.

2. (a) Lease of Railroad Equipment dated as of May 1, 1979, among MHC, Inc., Conagra, Inc., and Exchange National Bank of Chicago, as Trustee; and

(b) Assignment of Lease and Agreement dated as of May 1, 1979, between Exchange National Bank of Chicago, as Trustee, and La Salle National Bank, as Agent.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Agent-Vendor:

La Salle National Bank  
135 South LaSalle Street  
Chicago, Illinois 60690

(2) Trustee:

Exchange National Bank of Chicago  
130 South LaSalle Street  
Chicago, Illinois 60690

(3) Builder:

Pullman Incorporated  
(Pullman Standard Division)  
200 South Michigan Avenue  
Chicago, Illinois 60604

(4) RMC-Vendor:

Railway Marketing Corporation  
450 Park Avenue  
New York, New York 10022

(5) Lessee:

MHC, Inc.  
200 Kiewit Plaza  
Omaha, Nebraska 68131

(6) Guarantor:

Conagra, Inc.  
200 Kiewit Plaza  
Omaha, Nebraska 68131

Please file and record the documents referred to in this letter and cross-index them under the names of the Agent-Vendor, the Trustee, the Builder, the Lessee and the Guarantor.

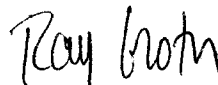
The equipment covered by the aforementioned documents consists of:

200 4,750 cubic foot covered hopper grain cars bearing identifying numbers CAGX 100-299.

There is also enclosed a check for \$100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document) and the Lease of Railroad Equipment, and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,



Raymond C. Groth  
As Agent for Conagra, Inc.

Interstate Commerce Commission,  
Washington, D. C. 20423

Attention of Mr. H. G. Homme, Jr.,  
Secretary.

Encls.

64A

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

7/27/79

**OFFICE OF THE SECRETARY**

Raymond C. Groat  
Cravat, Swaine & Moore  
One Chase Manhattan Plaza  
New York, N.Y. 10039

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/27/79 at 1:40pm, and assigned re-recording number(s). 10683, 10683-A, 10683-B, 10683C

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

10683  
REGISTRATION NO. .... FROM 1425

EXECUTED

*July* 27 1979  
OFFICE OF THE SECRETARY OF STATE

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[CS&M Ref. 4876-007]

CONDITIONAL SALE AGREEMENT

Dated as of May 1, 1979

among

EXCHANGE NATIONAL BANK OF CHICAGO,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement  
dated as of the date hereof  
with  
ITT Industrial Credit Company of Tennessee,

RAILWAY MARKETING CORPORATION

and

PULLMAN INCORPORATED  
(Pullman Standard Division),  
Builder

10% Conditional Sale Indebtedness due 1999  
[covering 200 4,750 cubic foot covered hopper grain cars]

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# CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of May 1, 1979, among PULLMAN INCORPORATED (Pullman Standard Division), a Delaware corporation (the "Builder"), RAILWAY MARKETING CORPORATION, a Delaware corporation ("RMC" or the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof), and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, acting not in its individual capacity but solely as Trustee (the "Trustee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with ITT INDUSTRIAL CREDIT COMPANY OF TENNESSEE, a Tennessee corporation (the "Owner").

WHEREAS the Builder has agreed to construct, sell and deliver to RMC, and RMC has agreed to purchase from the Builder and conditionally sell to the Trustee, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto to the extent not excluded herefrom under the provisions hereof (the "Equipment");

WHEREAS the Trustee is entering into a Lease of Railroad Equipment with MHC, INC., an Oregon corporation (the "Lessee"), and CONAGRA, INC., a Delaware corporation (the "Guarantor"), in substantially the form attached hereto as Annex C (the "Lease"); and

WHEREAS LA SALLE NATIONAL BANK (the "Agent") is acting as agent for a certain investor (the "Investor" and, together with any assignees, collectively the "Investors") pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Lessee, the Guarantor, the Agent, the Trustee, the Owner and the Investor;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

## ARTICLE 1

### ASSIGNMENT; DEFINITIONS

1.1. Contemplated Sources of Purchase Price; Assignment. The parties hereto contemplate that the Trustee

will furnish 21.9294% of the Trustee's Purchase Price (as defined in Paragraph 4.1 hereof) for the Equipment and that an amount equal to the balance of such Trustee's Purchase Price shall be paid to RMC by the Agent pursuant to an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") among the Builder, RMC and the Agent. RMC shall pay to the Builder RMC's Purchase Price (as defined in Paragraph 4.1 hereof) pursuant to the terms of Article 4 hereof.

1.2 Lease Assignment. The Trustee will assign to the Vendor (as defined in Paragraph 1.3 hereof), as security for the payment and performance of all the Trustee's obligations hereunder, all right, title and interest of the Trustee in and to the Lease, pursuant to an Assignment of Lease and Agreement in substantially the form attached hereto as Annex D (the "Lease Assignment"), and the Lessee shall consent thereto pursuant to a Consent and Agreement substantially in the form attached to the Lease Assignment (the "Consent").

1.3. Meaning of "Builder" and "Vendor". The term "Builder", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, the party hereto which has manufactured the units of Equipment to be constructed and sold hereunder and any successor or successors for the time being to its manufacturing properties and business. The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights, RMC, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights, as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment.

1.4. Purchase Order. It is understood and agreed that all contractual arrangements between RMC and the Builder insofar as they relate to the Equipment (said arrangements hereinafter called the "Purchase Order") shall be superseded by this Agreement, and the obligations of the Trustee to purchase and pay for the units of Equipment shall be exclusively and completely governed by, and subject to, the conditions provided herein.

## ARTICLE 2

### CONSTRUCTION AND SALE

Pursuant to this Agreement, the Builder shall construct the Equipment at its plant described in Annex B

hereto, and will sell and deliver the Equipment to RMC, RMC will (as hereinafter provided) purchase from the Builder and accept delivery of and immediately thereafter conditionally sell and deliver to the Trustee, and the Trustee will purchase from RMC and accept delivery of and pay for, the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, RMC, the Trustee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications"). The Builder represents and warrants to the Lessee and the Owner that (i) the design, quality and component parts of each unit of the Equipment to be delivered by the Builder under this Agreement shall conform, on the date of delivery and acceptance thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, (ii) none of such component parts will be used components and (iii) none of such units will have been used so as to preclude the original use thereof by the Lessee.

### ARTICLE 3

#### INSPECTION AND DELIVERY

3.1. Place of Delivery. The Builder will deliver the units of the Equipment to RMC and RMC will immediately thereafter deliver to the Trustee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Trustee), freight charges and storage charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that the Builder and RMC shall not have any obligation to deliver any unit of Equipment hereunder: (i) subsequent to the commencement of any proceedings specified in clause (c) or (d) of Paragraph 16.1 hereof; or (ii) subsequent to the occurrence of any event of default (as described in Paragraph 16.1 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default. The Builder and RMC agree not to deliver any unit of the Equipment hereunder (a) following receipt of written notice from the Trustee or the Agent of the commencement of any such proceedings or the

occurrence of any such event, as aforesaid, or (b) until it receives notice (i) from the Agent that the conditions contained in Paragraph 7 of the Participation Agreement have been met and (ii) from the Trustee that the conditions contained in Paragraph 8 of the Participation Agreement have been met.

3.2. Force Majeure. The respective obligations of the Builder and RMC as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities or delays of carriers or subcontractors.

3.3. Exclusion of Equipment. Any unit of Equipment not delivered pursuant to Paragraph 3.1 hereof and any unit of Equipment not delivered and accepted hereunder on or before December 31, 1979, shall be excluded from this Agreement, and RMC and the Trustee shall be relieved of their respective obligations hereunder to purchase and pay for such Equipment. If any unit of Equipment shall be excluded herefrom pursuant to the preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions of this Paragraph 3.3 or pursuant to Paragraph 4.1 hereof, or in the event the Trustee is relieved of its obligation hereunder to accept or pay for any or all units of Equipment in accordance with the terms and conditions hereof for any reason whatsoever, RMC will be obligated to accept all such units completed and delivered by the Builder and to pay the full purchase price therefor when due, all in accordance with the terms of its prior contractual arrangements with the Builder relating to the Equipment (the "Purchase Order"), and the Trustee will reassign, transfer and set over to RMC and the Builder, as their respective interests shall appear, all the right, title and interest of the Trustee in and to the units so excluded and the Purchase Order to the extent relating thereto.

3.4. Inspection. During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Trustee (who may be employees of the Lessee), and the Builder shall grant to such authorized

inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Prior to delivery to RMC by the Builder and to the Trustee by RMC, such unit or units shall be presented to an inspector of RMC and the Trustee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of RMC and the Trustee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Trustee and are marked in accordance with Paragraph 10.1 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Paragraph 14.4 hereof. By § 2 of the Lease and by this Paragraph 3.4, the Trustee and RMC, respectively, are appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to § 2 of the Lease shall be deemed to be acceptance of such unit by the Trustee and RMC.

3.5. Builder's and RMC's Responsibilities After Delivery. On delivery of units of Equipment and acceptance by RMC and the Trustee of each such unit hereunder at the place specified for delivery, the Builder and RMC shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Paragraph 14.4 hereof.

#### ARTICLE 4

##### PURCHASE PRICE AND PAYMENT

4.1. Meaning of "Trustee's Purchase Price" and "RMC's Purchase Price"; Exclusion of Units. The base price or prices per unit of the Equipment to be paid by the Trustee to RMC are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as are provided for in the Purchase Order or as otherwise may be agreed to by RMC, the Trustee and the Lessee. The term "Trustee's Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in

the invoice or invoices of RMC delivered to the Trustee and, if the Trustee's Purchase Price is other than the base price or prices set forth in said Annex B, the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Trustee (such invoice or invoices being hereinafter called "RMC's Invoices"). The base price or prices per unit of the Equipment to be paid by RMC to the Builder are as set forth in the Purchase Order. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder and RMC. The term "RMC's Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the Builder's invoice or invoices delivered to RMC and, if RMC's Purchase Price is other than the base price or prices set forth in the Purchase Order, the Builder's invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of RMC and the Builder (such invoice or invoices hereinafter called the "Builder's Invoice"). If on any Closing Date (as defined in Paragraph 4.2 hereof) the aggregate Trustee's Purchase Price of Equipment for which settlement has theretofore been and is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as to which the Trustee, the Agent and the Lessee may have agreed prior to the delivery of the Equipment being settled for on such Closing Date), the Builder, RMC (and any assignee of RMC) and the Trustee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Trustee and the Lessee, which will, after giving effect to such exclusion, reduce such aggregate Trustee's Purchase Price to not more than said Maximum Purchase Price (or such higher amount as aforesaid) and the Trustee shall have no further obligation or liability in respect of units so excluded.

4.2. Settlement and Closing Dates. The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by RMC and the Trustee, respectively, as is provided in Item 2 of Annex A hereto. The term "Closing Date" with respect to any Group (as hereinafter defined) shall be such date as is specified by the Lessee in accordance with Item 2 of Annex A hereto by six days' written notice thereof with the concurrence of the Trustee, the Agent, the Builder and RMC, but in no event shall such Date be later than December 31, 1979. Such notice shall specify the aggregate Trustee's Purchase Price of such

Group and a copy thereof shall be sent by the Lessee to RMC, the Builder, the Agent and the Trustee. The term "Group", as used herein, shall mean the group of units of Equipment being settled for on any Closing Date. The place of each closing shall be determined by mutual agreement among the parties hereto. At least five business days prior to the Closing Date with respect to a Group of Equipment, the Builder shall present to RMC and the Trustee the Builder's Invoice and RMC shall present to the Trustee and the Lessee RMC's Invoices for the Equipment to be settled for. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, are authorized or obligated to remain closed.

4.3. Indebtedness of Trustee to Vendor. Subject to the terms of this Agreement, the Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash or immediately available funds to the Vendor at such place as the Vendor may designate, the Trustee's Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group an amount equal to 21.9294% of the aggregate Trustee's Purchase Price of the units of Equipment in such Group; and

(b) in 80 quarterly installments, as hereinafter provided, an amount equal to the aggregate Trustee's Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (said portion of the Trustee's Purchase Price payable in installments under this subparagraph (b) is hereinafter called the "CSA Indebtedness").

4.4. Indebtedness of RMC to the Builder. RMC hereby acknowledges itself to be indebted to the Builder in the amount of, and hereby promises to pay in full in cash to the Builder, on the Closing Date with respect to each Group, at such place as the Builder may designate, RMC's Purchase Price.

4.5. CSA Indebtedness; Payment Dates; Interest.  
(a) The installments of the CSA Indebtedness shall be payable quarterly in each year, commencing on the day corresponding



to the last Closing Date in the third month immediately following such Closing Date and the corresponding day in each of the 79 three-month periods immediately following such first payment, each such date being hereinafter called a "Payment Date". The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 10% per annum. Interest on the unpaid balance of the CSA Indebtedness shall be payable to the extent accrued on the last Closing Date and each Payment Date. The amounts of CSA Indebtedness payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal and interest shall completely amortize the CSA Indebtedness at maturity. The Trustee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

(b) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the preceding business day.

4.6. Calculation of Interest. Interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months except that interest payable on the last Closing Date shall be computed on an actual elapsed day, 365-day year, basis.

4.7. Penalty Interest. The Trustee will pay interest, to the extent legally enforceable, at the rate of 11% per annum (the "Penalty Rate") upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

4.8. Currency of Payment. All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Articles 7 and 16 hereof, the Trustee shall not have the privilege of prepaying any portion

of the CSA Indebtedness prior to the date it becomes due.

4.9. Liability of Trustee Limited to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments. Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof, except as set forth in this Paragraph 4.9), but not limiting the effect of Article 23 hereof, it is understood and agreed by the Builder, RMC and the Vendor that the liability of the Trustee or any assignee of the Trustee for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of Paragraph 4.3 hereof and the proviso to Paragraph 13.3 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Trustee only to the extent that the Trustee or any assignee of the Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Builder, RMC and the Vendor agree that the Trustee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Trustee or any assignee of the Trustee. As used herein the term "income and proceeds from the Equipment" shall mean:

(i) if one of the events of default specified in Paragraph 16.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Trustee or any assignee of the Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Paragraph 7.2 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 13 or any other provision of the Lease (except any indemnity paid or payable to the Trustee in its individual capacity pursuant to § 6 or § 12 of the Lease); and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition; and

(ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b)

(not including amounts paid by the Lessee to the Trustee as reimbursement of sums paid by the Trustee on account of prior defaults under subparagraph A of § 13.1 of the Lease) as are indefeasibly received by the Trustee or any assignee of the Trustee and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement;

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Trustee or any assignee of the Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Trustee or any assignee of the Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Trustee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Trustee's Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Trustee for an amount in excess of the amounts payable by the Trustee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

## ARTICLE 5

### SECURITY INTEREST IN THE EQUIPMENT

5.1. Vendor To Retain Security Interest; Accessions Are Part of Equipment. The Vendor shall and hereby does retain a security interest in the Equipment until the Trustee shall have made all its payments under this Agreement and

shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Trustee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Trustee and the Lessee as provided in this Agreement and the Lease. Such retention of security interest is solely to secure performance by the Trustee of its obligations under this Agreement (without regard to any provision of this Agreement limiting the liability of the Trustee), and, subject thereto, ownership of the Equipment shall be and remain in the Trustee subject to such performance. Any and all parts installed on and additions and replacements made to any unit of the Equipment (i) which are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Trustee's Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the Association of American Railroads and/or the Interstate Commerce Commission, the United States Department of Transportation or any other applicable regulatory body, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

#### 5.2. Obligations Upon Payment of CSA Indebtedness.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Trustee's Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Trustee at that time, will (a) execute an instrument releasing its security interest in the Equipment and transferring such interest to the Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Trustee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Trustee to the Equipment and (c) pay to the Trustee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Trustee hereby waives and releases any and all rights, existing or that may be acquired, in or to the

payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by the Trustee.

## ARTICLE 6

### TAXES

6.1. General Tax Indemnification. Whether or not any of the transactions contemplated hereby are consummated, the Trustee agrees to pay, and to indemnify and hold the Vendor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Trustee, the Owner, the Vendor, the Lessee, the Guarantor, the trust estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States of America or by any foreign country or subdivision thereof, upon or with respect to: any unit of the Equipment or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; or this Agreement, the CSA Assignment, the Lease, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to the Equipment (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes measured solely by the net income based upon the Vendor's receipt of payments provided for herein (other than payments due the Vendor under this Article 6 for which the Vendor is entitled to a corresponding deduction in the calculation of its net income) and franchise and value added taxes which are in lieu of such net income taxes; and (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; provided, however, that the Trustee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in Paragraph 6.2 hereof.

6.2. Claims; Contests; Refunds. If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the Trustee. If reasonably requested by the Trustee in writing, the Vendor shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Trustee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Trustee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor, which consent shall not be unreasonably withheld. If the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Trustee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Trustee the amount of such refund or interest net of expenses; provided, however, that no event of default set forth in Paragraph 16.1 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Trustee under or arising out of this Article 6, the Trustee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Trustee.

6.4. Survival. All of the obligations of the Trustee under this Article 6 shall survive and continue, notwithstanding payment in full of all other amounts due under this Agreement.

## ARTICLE 7

## MAINTENANCE; CASUALTY OCCURRENCES

7.1. Maintenance. The Trustee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order, repair and condition and eligible for interchange service, ordinary wear and tear excepted.

7.2. Casualty Occurrences. In the event that any unit of Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever or any unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of the Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of the Lease (such occurrences hereinafter called "Casualty Occurrences"), the Trustee shall, promptly after it shall have received notice from the Lessee or has otherwise been informed that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of an installment on the CSA Indebtedness after such notice from the Lessee has been received (each such date hereinafter called a "Settlement Date"), the Trustee shall pay to the Vendor in the case of a Casualty Occurrence a sum equal to the Casualty Value (as defined in Paragraph 7.3 hereof) of such unit suffering a Casualty Occurrence as of such Settlement Date, together with an amount equal to accrued interest thereon (as hereinafter provided). The Trustee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied on the date of such payment to prepay, without penalty or premium, ratably in accordance with the unpaid balance of each installment, the CSA Indebtedness, together with all interest accrued on the portion of the CSA Indebtedness being prepaid. The Trustee shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor and the Lessee may request, calculated as provided in Paragraph 4.5 hereof.

7.3. Casualty Value. The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall

be deemed to be that portion of the original Trustee's Purchase Price thereof referred to in Paragraph 4.3(b) hereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid as of such date. For the purpose of this Paragraph 7.3 and Paragraph 7.4 hereof, each payment of the Trustee's Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Trustee's Purchase Price of such unit bears to the aggregate original Trustee's Purchase Price of all the Equipment.

7.4. Obligations upon Payment of Casualty Value.

Upon payment by the Trustee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Trustee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Trustee, will execute and deliver to the Trustee, at the expense of the Trustee, an appropriate instrument confirming such passage to the Trustee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Trustee may make clear upon the public records the title of the Trustee to such unit.

## ARTICLE 8

### INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of any unit suffering a Casualty Occurrence, the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Trustee; provided, however, that no event of default shall have occurred and be continuing hereunder and the Trustee shall have made payment of the Casualty Value of such unit, together with accrued interest thereon, to the Vendor. All insurance proceeds received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to the Trustee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.



## ARTICLE 9

## REPORTS AND INSPECTIONS

On or before March 31 in each year, commencing with the year 1980, the Trustee shall, subject to the provisions of Article 23 hereof, cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and the Trustee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

## ARTICLE 10

## MARKING OF EQUIPMENT

10.1. Marking of Equipment. The Trustee will cause each unit of the Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Trustee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by or on behalf of the Trustee in all public offices where this Agreement shall have been filed, recorded and deposited.

10.2. No Designations of Ownership. Except as provided in Paragraph 10.1 of this Agreement, the Trustee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

## ARTICLE 11

## COMPLIANCE WITH LAWS AND RULES

During the term of this Agreement, the Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the

Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Trustee will or will cause the Lessee to conform therewith at no expense to the Vendor; provided, however, that the Trustee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

## ARTICLE 12

### POSSESSION AND USE

12.1. Possession and Use of Equipment by Trustee. The Trustee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by RMC to the Trustee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. The Trustee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended in any material respect or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

## ARTICLE 13

### PROHIBITION AGAINST LIENS

13.1. Trustee To Discharge Liens. The Trustee

will pay or discharge any and all sums claimed by any party from, through or under the Trustee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

13.2. No Breach for Certain Liens. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

13.3. Article 13 Subject to Article 23 Except in Certain Instances. The obligations of the Trustee under this Article 13 are subject to the limitations contained in Article 23 hereof; provided, however, that the Trustee will pay or discharge any and all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Trustee or its successors or assigns, and to the extent it receives funds sufficient for such purpose from the Owner, from, through or under the Owner and its successors and assigns, not arising out of the transactions contemplated hereby or in other documents mentioned herein (but, to the extent that it receives funds sufficient for such purpose from the Owner, including taxes arising out of the receipt of rentals and other payments under the Lease and any other proceeds from the Equipment), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment or the Trustee's interest in the Lease and the payments to be made thereunder, but the Trustee shall not be required to pay or discharge any such tax, claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment

thereof does not adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

#### ARTICLE 14

##### INDEMNITIES AND WARRANTIES

14.1. Indemnification. The Trustee shall pay, and shall protect, indemnify and hold harmless the Vendor and any assignee hereof, and their respective successors, assigns, agents and servants ("Indemnified Persons"), from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise out of this Agreement or the Equipment, including without limitation those in any way relating to or arising or alleged to arise out of: (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any unit of Equipment or portion thereof; (ii) any latent and other defects whether or not discoverable by the Trustee or the Vendor; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Equipment or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Equipment or of any other equipment in connection with the Equipment (whether owned or under the control of the Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Agreement or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Equipment or the leasing, ownership, use, replacement, adaptation or maintenance thereof, except to the extent such violation arises from the gross negligence or wilful misconduct of the Vendor; or (vii) any claim arising out of the Vendor's retention of a security interest

under this Agreement or the Lease Assignment. The Trustee shall be obligated under this Article 14, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Trustee under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Trustee may and, upon such Indemnified Person's request, will at the Trustee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Trustee and approved by such Indemnified Person and, in the event of any failure by the Trustee to do so, the Trustee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Trustee is required to make any payment under this Article 14, the Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States of America or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Trustee agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this Article 14 by the Trustee, and provided that no event of default described in Paragraph 16.1 hereof (or other event which with lapse of time or notice or both would constitute such an event of default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (other than the Trustee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to the Lease shall be paid over to the

Trustee to the extent necessary to reimburse the Trustee for indemnification payments previously made in respect of such matter.

14.2. Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise. Upon the payment in full of any indemnities as contained in this Article 14 by the Trustee, and provided that no event of default (or other event which with lapse of time or notice or both would constitute an event of default) shall have occurred and be continuing, the Trustee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the matter against which indemnity has been given.

14.3. Trustee Not Released if Equipment Damaged or Lost. The Trustee will bear the responsibility for, and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

14.4. Warranties of the Builder; Patent Indemnities. The agreement of the parties relating to the Builder's warranties of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

The Builder represents and warrants to RMC and the Trustee and their respective successors and assigns that, at the time of delivery and acceptance of each unit of the Equipment under this Agreement, RMC will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

The Builder represents that it is not entering into this Agreement, or into any other transaction contemplated by the Participation Agreement, directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, or, insofar as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974, as amended.

14.5. Warranties of RMC. RMC represents and warrants to the Trustee that, at the time of delivery and acceptance of each unit of the Equipment under this Agreement, the Trustee will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

## ARTICLE 15

### ASSIGNMENTS

15.1. Assignment by Trustee. Except as provided in Article VII of the Trust Agreement, the Trustee will not transfer the right to possession of any unit of the Equipment (except to the Lessee pursuant to the Lease) or sell, assign, transfer or otherwise dispose of its rights under this Agreement.

15.2. Assignment by Vendor. All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Trustee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder or RMC from, any of the obligations of the Builder to construct and deliver the Equipment to RMC or of RMC to deliver the Equipment to the Trustee in accordance herewith or to respond to their respective warranties and indemnities referred to in Article 14 hereof, or relieve the Trustee of its obligations to RMC, or RMC of its obligations to the Builder, contained in Articles 2, 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. Notice of Assignment by Vendor. Upon any such assignment pursuant to Paragraph 15.1 or 15.2 hereof, either the assignor or the assignee shall give written notice to the Trustee and the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Trustee of the notification of any such assignment, all payments thereafter to be made by the Trustee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

15.4. No Set-Off Against CSA Indebtedness Upon Assignment. The Trustee recognizes that this Agreement will be assigned to the Agent as provided in the CSA Assignment. The Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Agent to the entire unpaid CSA Indebtedness in respect of the Trustee's Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by the Trustee arising out of any breach of any obligation of the Builder or RMC with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Trustee or the Lessee by the Builder or RMC. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Trustee against and only against the Builder or RMC, as the case may be.

## ARTICLE 16

### DEFAULTS

16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration of CSA Indebtedness. In the event that any one or more of the following events of



default shall occur and be continuing, to wit:

(a) the Trustee shall fail to pay or cause to be paid in full any sum payable by the Trustee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Trustee) and such default shall continue for 15 days after the date such payment is due and payable; or

(b) the Trustee, the Lessee or the Guarantor shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Trustee), the CSA Assignment, the Lease or the Lease Assignment or any covenant, agreement, term or provision of the Participation Agreement made expressly for the benefit of the Vendor, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee and the Guarantor under the Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 90 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceeding shall be commenced by or against the Trustee, the Lessee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Trustee hereunder or

the Lessee or the Guarantor under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Trustee under this Agreement or the Lease Assignment or the Lessee or the Guarantor under the Lease or the Consent), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Trustee under this Agreement and the Lease Assignment or the Lessee or the Guarantor under the Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Trustee or the Lessee or the Guarantor, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 90 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) any Event of Default under the Lease (other than an event referred to in § 13.1(A) of the Lease) shall have occurred and be continuing; or

(f) the Lessee shall cease to be a wholly owned subsidiary of the Guarantor;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Trustee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) cause the term of the Lease immediately upon such notice to terminate (and the Trustee acknowledges the right of the Vendor to terminate the term of the Lease), provided, however, that such termination shall not be in derogation of or impair the rights of the Trustee or the Vendor (under the assignment thereof), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under § 13 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Trustee or the Vendor (under the assignment thereof),

as the case may be, to sue for and recover damages provided for in § 13 of the Lease upon the occurrence of an event of default under the Lease, and/or (ii) declare (a "Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Penalty Rate to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Trustee, subject to the provisions of Articles 4 and 23 hereof, wherever situated. The Trustee shall promptly notify the Vendor of any event of which it has knowledge which constituted, constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

In the case of an event of default by the Lessee under subparagraph (b) above or an event of default under subparagraph (c), (d), (e) or (f) above, the Trustee shall have the option to prepay all, but not less than all, the then outstanding CSA Indebtedness plus interest accrued to the date of such payment and the obligations upon payment of the CSA Indebtedness in Article 5.2 hereof shall apply; it being agreed, however, that unless and until the Trustee has unconditionally agreed with the Vendor (by written notice to the Vendor) to exercise such option, the Vendor may exercise all of its rights and remedies upon the occurrence of an event of default under this Agreement.

A copy of any notice given to the Trustee pursuant to this Paragraph 16.1 shall also be given to the Lessee, but the failure to give any such notice shall not relieve the Lessee of any of its obligations under this Agreement or the Lease.

16.2. Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Trustee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Trustee that

time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

## ARTICLE 17

### REMEDIES

17.1. Vendor May Take Possession of Equipment. At any time during the continuance of a Declaration of Default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Trustee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Trustee, the Lessee or any other person and for such purpose may enter upon the premises of the Trustee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Trustee or the Lessee, subject to all mandatory requirements of due process of law.

17.2. Assembling of Equipment for Vendor. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Trustee shall at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) cause to be placed such units upon such storage tracks as the Vendor reasonably may designate;

(b) cause such units to be stored on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or other-

wise disposed of by the Vendor; and

(c) cause the same to be transported to any reasonable place, as directed by the Vendor.

During any storage period, the Lessee has agreed pursuant to § 14.1 of the Lease, at its own cost and expense, to insure, maintain and keep each such unit in good order and repair, to cause each such unit to be eligible for railroad interchange in accordance with the interchange rules of the American Association of Railroads and to permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence to the agreement between the parties, and the Trustee acknowledges that upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled under the Lease as assignee of the rights of the Trustee thereunder to a decree against the Lessee and the Guarantor requiring specific performance hereof. The Trustee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

### 17.3. Vendor May Dispose of or Retain Equipment.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as provided in Paragraph 17.1 hereof) may, at its election, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Trustee and the Lessee by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Trustee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this

Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee; provided, further, that if the Trustee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. Vendor May Sell Equipment; Trustee's Right of Redemption. At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Trustee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Trustee, the Lessee or any other party claiming from, through or under the Trustee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Trustee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee. The proceeds of such sale or other disposition, less the attorneys' fee and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

17.5. Sale of Equipment by Vendor. Any sale hereunder may be held or conducted at such place or places and at

such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Trustee, the Lessee or the Guarantor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Trustee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee, the Guarantor and the Trustee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Trustee, the Guarantor or the Lessee (except to the extent of surplus money received as provided in Paragraph 17.7 hereof), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. Effect of Remedies and Powers and Exercise Thereof. Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Trustee shall not otherwise alter or affect the Vendor's rights or the Trustee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due

hereunder shall not be deemed to alter or affect the Trustee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. Deficiencies. If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Trustee shall, subject to the limitations of Paragraph 4.9 hereof and Article 23 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Penalty Rate, and, if the Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of Paragraph 4.9 hereof and Article 23 hereof, be entitled to recover a judgment therefor against the Trustee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Trustee.

17.8. Expenses. The Trustee will pay all reasonable fees, costs and expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

17.9. Remedies Subject to Mandatory Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

## ARTICLE 18

### APPLICABLE STATE LAWS

18.1. Conflict with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the



Trustee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement, except such portion as relates to the sale of the Equipment by the Builder to RMC, shall be deemed to be a conditional sale and enforced as such.

18.2. Waiver of Notices. Except as otherwise provided in this Agreement, the Trustee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights and any and all rights of redemption.

## ARTICLE 19

### RECORDING

The Trustee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303; and the Trustee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Trustee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

## ARTICLE 20

### REPRESENTATIONS AND WARRANTIES OF BUILDER AND RMC

The Builder hereby represents and warrants to the Trustee and RMC, and their successors and assigns, that this Agreement is duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due

authorization, execution and delivery by the Trustee and RMC, this Agreement is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms.

RMC hereby represents and warrants to the Trustee and the Builder, and their successors and assigns, that this Agreement is duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Trustee and the Builder, this Agreement is, insofar as RMC is concerned, a legal, valid and existing agreement binding upon RMC in accordance with its terms.

## ARTICLE 21

### ARTICLE AND PARAGRAPH HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

21.1. Article and Paragraph Headings for Convenience Only. All article and paragraph headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

21.2 Effect and Modification of Agreement. Except for the Participation Agreement, the Trust Agreement and the CSA Assignment, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Trustee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Trustee and, if such variation or modification shall adversely affect its interests hereunder, the Builder and RMC.

## ARTICLE 22

### NOTICE

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered, telexed or mailed to it by first class mail, postage prepaid, at its chief place of business at the following

specified addresses:

(a) to the Trustee, at 130 South LaSalle Street, Chicago, Illinois 60690, attention of Corporate Trust Department, with copies to the Owner at 230 Hamm Building (2nd Floor), St. Paul, Minneapolis 55102, attention of Vice President-Director of Leasing;

(b) to the Lessee or the Guarantor, at the address of the Guarantor at 200 Kiewit Plaza, Omaha, Nebraska 68131, attention of Director of Transportation;

(c) to the Agent, at 135 South LaSalle Street, Chicago, Illinois 60690, attention of Corporate Trust Department;

(d) to the Builder, at the address specified in Item 1 of Annex A hereto;

(e) to RMC, at 450 Park Avenue, New York, New York 10022, attention of President;

(f) to any assignee of the Vendor, or of the Trustee, at such address as may have been furnished in writing to the Trustee, or the Vendor, as the case may be, by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

## ARTICLE 23

### IMMUNITIES; SATISFACTION OF UNDERTAKINGS

23.1. No Recourse Against Certain Persons. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Owner, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

23.2. Satisfaction of Certain Covenants. The obligations of the Trustee under Paragraphs 7.1, 17.2, 17.7 and 17.8 hereof, and under Articles 6, 9, 10, 11, 13, 14 and 19 hereof and any and all obligations at any time arising thereunder shall be deemed satisfied in full in all respects (except as set forth in Paragraph 13.3 thereof), and be of no further force or effect insofar as they involve personal liability for money or performance or otherwise of the Trustee, other than out of "income and proceeds from the Equipment" (as defined in Paragraph 4.9 hereof), by the Lessee's and the Guarantor's execution and delivery of the Lease. The Trustee shall not have any responsibility for the Lessee's or the Guarantor's failure to perform such obligations; but if the same shall not be performed, they shall constitute the basis for an event of default hereunder pursuant to Article 16 hereof. No waiver or amendment of the Lessee's or the Guarantor's undertakings under the Lease shall be effective unless joined in by the Vendor.

23.3. No Personal Liability of Trustee. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties and agreements herein made on the part of the financial institution acting as Trustee hereunder are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution, including its successors and assigns, or for the purpose or with the intention of binding said financial institution personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by said financial institution solely in the exercise of the powers expressly conferred upon said financial institution as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said financial institution or the Owner hereunder (except as provided in Paragraph 13.3 hereof) on account of any representation, warranty or agreement of the Trustee or the Owner hereunder (except as aforesaid or in the case of wilful misconduct or gross negligence), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under any of them, making claim hereunder, may look to said Trust Estate for satisfaction of

the same. Nothing contained in this Paragraph 23.3 shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Trustee (provided that neither the Trustee in its fiduciary or individual capacity nor the Owner shall have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate, including any interest therein of the Trustee or the Owner) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Equipment or the Lessee under the Lease.

The Trustee agrees not to enter into any supplement or amendment of the Trust Agreement except as provided in Section 8.01 thereof as in effect on the date of execution and delivery hereof.

#### ARTICLE 24

##### LAW GOVERNING

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, such additional rights, if any, arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any unit of Equipment shall be located, and such rights, if any, arising out of the marking of Equipment.

#### ARTICLE 25

##### EXECUTION

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set

forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

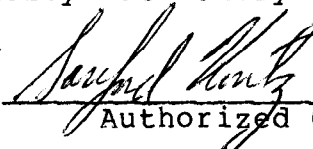
[Corporate Seal]

Attest:

  
Authorized Officer

EXCHANGE NATIONAL BANK OF  
CHICAGO, not in its individual  
capacity but solely as Trustee,

by

  
Authorized Officer

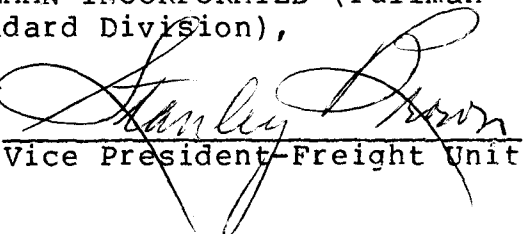
[Corporate Seal]

Attest:

  
Assistant Secretary

PULLMAN INCORPORATED (Pullman  
Standard Division),

by

  
Vice President-Freight Unit


[Corporate Seal]

Attest:

  
Secretary

RAILWAY MARKETING CORPORATION,

by

  
President

LEONARD M. WEISSMAN

STATE OF ILLINOIS, )  
 ) SS.:  
COUNTY OF COOK, )

On this 29<sup>th</sup> day of June 1979, before me personally appeared HANFORD KOVITZ, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of EXCHANGE NATIONAL BANK OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

Marion L. Fritscher  
Notary Public

[Notarial Seal]

My Commission expires

**My Commission Expires May 18, 1980**

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this 29 day of June 1979, before me personally appeared Stanley Brown to me personally known, who, being by me duly sworn, says that he is Vice President-Freight Unit of PULLMAN INCORPORATED (Pullman Standard Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

April K. Gentry  
Notary Public

[Notarial Seal]

My Commission expires 8-7-77

STATE OF <sup>New York</sup> ~~IS~~ )  
COUNTY OF <sup>New York</sup> ~~SS.~~ )

On this <sup>JULY</sup> 10 day of ~~June~~ 1979, before me personally appeared ~~LEONARD M. WEISMAN~~ to me personally known, who, being by me duly sworn, says that he is ~~PRESIDENT~~ of RAILWAY MARKETING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Norman E. Powell  
Notary Public

[Notarial Seal]

My Commission expires

NORMAN E. POWELL  
Notary Public, State of New York  
No. 41-8423503  
Qualified in Queens County  
Cert. Filed in New York County  
Commission Expires March 30, 1980  
1980



## SCHEDULE I

ALLOCATION SCHEDULE OF EACH \$1,000,000 OF CSA  
INDEBTEDNESS PAYABLE IN (i) ONE INTERIM PAYMENT  
OF INTEREST ONLY AND (ii) 80 QUARTERLY  
INSTALLMENTS OF PRINCIPAL AND INTEREST

<u>Installment No.</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Remaining Principal Balance</u>
(Interim Period)	*	*	-0-	1,000,000.00
1	30,700.38	25,000.00	5,700.38	994,299.62
2	30,700.38	24,857.49	5,842.89	988,456.73
3	30,700.38	24,711.42	5,988.96	982,467.77
4	30,700.38	24,561.69	6,138.69	976,329.08
5	30,700.38	24,408.23	6,292.15	970,036.93
6	30,700.38	24,250.92	6,449.46	963,587.47
7	30,700.38	24,089.69	6,610.69	956,976.77
8	30,700.38	23,924.42	6,775.96	950,200.81
9	30,700.38	23,755.02	6,945.36	943,255.45
10	30,700.38	23,581.39	7,118.99	936,136.46
11	30,700.38	23,403.41	7,296.97	928,839.49
12	30,700.38	23,220.99	7,479.39	921,360.09
13	30,700.38	23,034.00	7,666.38	913,693.71
14	30,700.38	22,842.34	7,858.04	905,835.68
15	30,700.38	22,645.89	8,054.49	897,781.19
16	30,700.38	22,444.53	8,255.85	889,525.34
17	30,700.38	22,238.13	8,462.25	881,063.09
18	30,700.38	22,026.58	8,673.80	872,389.28
19	30,700.38	21,809.73	8,890.65	863,498.64
20	30,700.38	21,587.47	9,112.92	854,385.72
21	30,700.38	21,359.64	9,340.74	845,044.98
22	30,700.38	21,126.12	9,574.26	835,470.73
23	30,700.38	20,886.77	9,813.61	825,657.11
24	30,700.38	20,641.43	10,058.95	815,598.16
25	30,700.38	20,389.95	10,310.43	805,287.73
26	30,700.38	20,132.19	10,568.19	794,719.55
27	30,700.38	19,867.99	10,832.39	783,887.15
28	30,700.38	19,597.18	11,103.20	772,783.95
29	30,700.38	19,319.60	11,380.78	761,403.17
30	30,700.38	19,035.08	11,665.30	749,737.87

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\* Interest accrued during period elapsed between the Deposit Date  
(as defined in the Participation Agreement) and last Closing Date.

<u>Installment No.</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Remaining Principal Balance</u>
31	30,700.38	18,743.45	11,956.93	737,780.93
32	30,700.38	18,444.52	12,255.86	725,525.08
33	30,700.38	18,138.13	12,562.25	712,962.82
34	30,700.38	17,824.07	12,876.31	700,086.51
35	30,700.38	17,502.16	13,198.22	686,888.29
36	30,700.38	17,172.21	13,528.17	673,360.12
37	30,700.38	16,834.00	13,866.38	659,493.74
38	30,700.38	16,487.34	14,213.04	645,280.70
39	30,529.12	16,132.02	14,397.11	630,883.60
40	28,261.55	15,772.09	12,489.46	618,394.14
41	29,220.95	15,459.85	13,761.10	604,633.04
42	29,035.82	15,115.83	13,919.99	590,713.05
43	27,618.47	14,767.83	12,850.64	577,862.40
44	25,135.97	14,446.56	10,689.41	567,172.99
45	27,240.49	14,179.32	13,061.17	554,111.82
46	27,065.55	13,852.80	13,212.76	540,899.07
47	24,749.64	13,522.48	11,227.16	529,671.90
48	22,075.42	13,241.80	8,833.63	520,838.28
49	25,304.02	13,020.96	12,283.06	508,555.22
50	25,140.22	12,713.88	12,426.34	496,128.88
51	22,687.33	12,403.22	10,284.11	485,844.77
52	19,846.11	12,146.12	7,699.99	478,144.78
53	24,158.20	11,953.62	12,204.58	465,940.20
54	23,999.30	11,648.50	12,350.80	453,589.40
55	21,789.04	11,339.74	10,449.30	443,140.10
56	18,788.52	11,078.50	7,710.02	435,430.08
57	23,772.65	10,885.75	12,886.89	422,543.19
58	23,608.34	10,563.58	13,044.76	409,498.43
59	21,264.23	10,237.46	11,026.77	398,471.66
60	18,092.91	9,961.79	8,131.11	390,340.55
61	23,368.22	9,758.51	13,609.71	376,730.84
62	23,194.72	9,418.27	13,776.45	362,954.39
63	20,712.25	9,073.86	11,638.39	351,316.00
64	17,360.64	8,782.90	8,577.74	342,738.26
65	22,941.29	8,568.46	14,372.84	328,365.42
66	22,758.06	8,209.14	14,548.92	313,816.50
67	20,129.53	7,845.41	12,284.11	301,532.39
68	16,587.56	7,538.31	9,049.25	292,483.14
69	22,490.57	7,312.08	15,178.49	277,304.65
70	22,297.06	6,932.62	15,364.45	261,940.20
71	23,780.10	6,548.51	17,231.59	244,708.61

<u>Installment No.</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Remaining Principal Balance</u>
72	30,700.38	6,117.72	24,582.67	220,125.94
73	30,700.38	5,503.15	25,197.23	194,928.71
74	30,700.38	4,873.22	25,827.16	169,101.55
75	30,700.38	4,227.54	26,472.84	142,628.71
76	30,700.38	3,565.72	27,134.66	115,494.04
77	30,700.38	2,887.35	27,813.03	87,681.01
78	30,700.38	2,192.03	28,508.36	59,172.66
79	30,700.38	1,479.32	29,221.06	29,951.59
80	30,700.38	748.79	29,951.59	0.00

Annex A  
to  
Conditional Sale Agreement

- Item 1: PULLMAN INCORPORATED (Pullman Standard Division), a Delaware corporation (the "Builder"), having an address at 200 South Michigan Avenue, Chicago, Illinois 60604, attention of Vice President-Freight Unit.
- Item 2: The Equipment shall be settled for in no more than two Groups of units of Equipment delivered to and accepted by RMC and the Trustee unless a greater number shall be agreed to by the parties hereto.
- Item 3: The Builder warrants to RMC, the Trustee and the Lessee that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (the "CSA") and warrants that the Equipment will be free from defects in material (except as to items or specialties incorporated therein and workmanship with respect thereto specified by the Lessee and not manufactured by the Builder) and workmanship under normal use and service. The Builder's obligation under this Item 3 is limited to making good at its plant any part or parts of any unit of the Equipment which shall, within one year after the delivery of such unit of Equipment to the Lessee, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective; provided, however, that this warranty will be subject to the following limitations: (i) warranty coverage on unit running gear and contact points to unit structure is restricted to one year or 25,000 miles, whichever first occurs; and (ii) normal use and service is deemed to require inspection, adjustment, maintenance, and compliance with the Builder's written instructions and any applicable Federal, state or local laws or regulations. The foregoing warranty of the Builder is expressly in lieu of all other warranties to RMC, the Trustee and the Lessee, express or implied, including any implied warranty of merchantability or fitness for

a particular purpose, except for its obligations or liabilities to RMC and the Trustee under Articles 2, 3, 4 and 14 of the CSA, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid. In no event shall the Builder be liable for special or consequential damages.

- Item 4: Except in case of designs, processes or combinations specified by the Lessee and not developed or purported to be developed by the Builder, and articles and materials specified by the Lessee and not manufactured by the Builder, the Builder agrees to indemnify, protect and hold harmless RMC, the Trustee and the Lessee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Trustee, RMC and the Lessee because of the use in or about the construction or operation of the Equipment, or any unit hereof, of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right. The Lessee, as a condition to its being a third party beneficiary hereof, will indemnify, protect and hold harmless the Builder from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process or combination specified by the Lessee and not developed or purported to be developed by the Builder, or article or material specified by the Lessee and not manufactured by the Builder, which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the originator or seller or sellers of any design, process, combination, article or material specified by the Lessee and used by the Builder in or about the construction or

operation of the Equipment, or any unit thereof, on the ground that any such design, process, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and the Builder further agrees to execute and deliver to the Lessee all and every such further assurances as may be reasonably requested by them more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Lessee, as a condition to its being a third party beneficiary hereof, will give notice to the Builder of any claim known to the Lessee on the basis of which liability may be charged against the Builder hereunder.

Item 5: The Maximum Purchase Price per Unit referred to in Article 4 of the CSA is \$42,167.50.

Annex B  
to  
Conditional Sale Agreement

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
100 ton 4,750 cubic foot covered hopper grain cars	LO	Builder's No. 1027, dated Febru- ary 15, 1979	Butler, Pa.	200	CAGX 100- CAGX 299	\$42,167.50	\$8,433,500	July-August 1979 at Butler, Pa.

ANNEX C  
to  
Conditional Sale Agreement

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[CS&M Ref. 4876-007]

LEASE OF RAILROAD EQUIPMENT

Dated as of May 1, 1979

Among

MHC, INC.,

CONAGRA, INC.,

and

EXCHANGE NATIONAL BANK OF CHICAGO,  
not in its individual capacity but solely as  
Trustee under a Trust Agreement dated as of the  
date hereof with  
ITT Industrial Credit Company of Tennessee

[Covering 200 4,750 cubic foot covered hopper grain cars]

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# LEASE OF RAILROAD EQUIPMENT

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LEASE OF RAILROAD EQUIPMENT dated as of May 1, 1979, among MHC, INC., an Oregon corporation (the "Lessee"), CONAGRA, INC., a Delaware corporation (the "Guarantor"), and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, acting not in its individual capacity but solely as Trustee (the "Trustee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with ITT INDUSTRIAL CREDIT COMPANY OF TENNESSEE, a Tennessee corporation (the "Owner").

WHEREAS the Trustee is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with PULLMAN INCORPORATED (Pullman Standard Division), a Delaware corporation (the "Builder"), and RAILWAY MARKETING CORPORATION, a Delaware corporation ("RMC"), wherein the Builder has agreed to manufacture, sell and deliver to RMC, and RMC has agreed to sell and deliver to the Trustee, the units of railroad equipment described in Appendix A hereto (the "Equipment");

WHEREAS RMC is assigning certain of its interests in the CSA pursuant to an Agreement and Assignment dated the date hereof (the "CSA Assignment") to LA SALLE NATIONAL BANK, acting as agent (said agent as so acting, being hereinafter, together with its successors and assigns, called the "Vendor") for a certain investor under a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Vendor, the Lessee, the Guarantor, the Trustee, the Owner and the party named in Appendix I thereto (individually the "Investor" and, together with any assignees, collectively the "Investors");

WHEREAS the Lessee desires to lease such number of units of the Equipment as are settled for under the CSA (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the Trustee will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment"), and the Lessee and the Guarantor will acknowledge and consent thereto pursuant to the Consent and Agreement substantially in the form attached to the Lease Assignment (the "Consent");

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee and the Guarantor, the Trustee hereby leases the Units to the Lessee upon the following terms and conditions:

#### § 1. NET LEASE

This Lease is a net lease. Each of the Lessee's and the Guarantor's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, neither the Lessee nor the Guarantor shall be entitled to any abatement of rent or such other amounts, reduction thereof or setoff against rent or such other amounts, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee or the Guarantor against the Trustee or the Owner under this Lease or the CSA, including the Lessee's and the Guarantor's, as the case may be, rights by subrogation thereunder to the Builder, RMC or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Trustee or the Lessee or the Guarantor be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's or the Guarantor's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee or the Guarantor, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee and the Guarantor hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, each of the Lessee and the Guarantor hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of

the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee or the Guarantor hereunder shall be final, and neither the Lessee nor the Guarantor shall seek to recover all or any part of such payment from the Builder, RMC, the Trustee, the Owner or the Vendor for any reason whatsoever.

## § 2. DELIVERY AND ACCEPTANCE OF UNITS

The Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. Each delivery of a Unit to the Trustee under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is so delivered to the Trustee. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Trustee under the CSA and on behalf of itself hereunder and execute and deliver to the Trustee a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee on the date of such Certificate of Acceptance and is marked in accordance with § 5.1 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

## § 3. RENTALS

3.1. Amount and Date of Payment. The Lessee agrees to pay to the Trustee, as rental for each Unit subject to this Lease, (a) one interim rental payment on the last Closing Date (as defined in paragraph 4.2 of the CSA) and (b) thereafter 80 consecutive quarterly payments, in arrears, commencing on the day corresponding to the last Closing Date in the third month immediately following such Closing Date and the corresponding day in each of the 79 three-month periods immediately following such first quarterly rental payment. The interim rental payment shall be in an amount equal to .026631% of the Trustee's Purchase Price for each Unit subject to the Lease for each day elapsed from and including the Closing Date to, but not including, the date on which such payment is made. In respect of each Unit subject to this Lease, the 80 quarterly rental payments shall each be in an amount equal to 2.3968% multiplied by the

Trustee's Purchase Price (as defined in paragraph 4.1 of the CSA) of each such Unit.

In the event that there are any losses or liabilities arising out of or resulting from the Investments made pursuant to Paragraph 2 of the Participation Agreement, including, but not limited to, any Investment Deficiency in respect thereof, the rentals thereafter payable by the Lessee in respect of Units settled for concurrently with or after such losses, liabilities or deficiency arose shall be increased by such amount as shall, in the reasonable opinion of the Owner, cause such Owner's after-tax economic yields and cash flows, computed on the same assumptions, including tax rates, as were utilized by such Owner in originally evaluating this transaction (such economic yields and cash flows hereinafter called the Net Economic Return) to equal the Net Economic Return that would have been realized by such Owner if such loss or liability had not occurred.

In addition to the foregoing rentals, the Lessee hereby agrees to pay to the Trustee as rent amounts equal to the amounts required by the Trustee to make the payments provided for in the last sentence of the first paragraph and in the last paragraph of Paragraph 9 of the Participation Agreement on the dates required for such payments in said Paragraph 9 (without regard to the limitation of the obligation of the Trustee set forth therein) and the Trustee agrees to apply such rentals for such purposes.

3.2. Payments on Nonbusiness Days. If any of the rental payment dates referred to in § 3.1 is not a business day the rental payment otherwise payable on such date shall be payable on the next preceding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, are authorized or obligated to remain closed.

3.3. Instructions To Pay Vendor and Trustee. Upon execution and delivery of the Lease Assignment and until the Vendor shall have advised the Lessee in writing that all sums due from the Trustee under the CSA have been fully satisfied and discharged, the Trustee irrevocably instructs the Lessee to make all the payments provided for in this Lease (except indemnities or other payments payable to the Trustee in its individual capacity which shall be paid directly to the Trustee) to the Vendor, for the account of the Trustee, in care of the Vendor, with instructions to the Vendor (a) first to apply such payments to satisfy the obligations of the

Trustee under the CSA known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Trustee or to the order of the Trustee in immediately available funds at such place as the Trustee shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Vendor in writing that all sums due from the Trustee under the CSA have been fully discharged and satisfied, the installments of rental due hereunder, any Casualty Payments thereafter due pursuant to § 7 hereof shall be made to the Trustee in immediately available funds in the manner provided in § 3.4 hereof.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein as contemplated by § 3.1 in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

#### § 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery of such Unit under the CSA and, subject to the provisions of §§ 7, 13 and 16 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 10, 11, 12 and 17 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee and Guarantor Subject to CSA. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee and the Guarantor under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term, all as provided herein.

#### § 5. IDENTIFICATION MARKS

5.1. Identifying Numbers; Legend; Changes. The Lessee will cause each Unit to be kept numbered with the



identification number set forth in Appendix A hereto, or in the case of any Unit not there listed such identification number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Trustee's and Vendor's title to and property in such Unit and the rights of the Trustee under this Lease and of the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Trustee and filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Trustee an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Trustee's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Trustee in such Units.

5.2. Insignia of Lessee. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

#### § 6. GENERAL TAX INDEMNIFICATION

The Lessee assumes responsibility for and agrees to pay, and agrees to protect, save, keep harmless and indemnify on an after-tax basis the Trustee (in both its individual and fiduciary capacities) and the Vendor and their successors and

assigns (the "Indemnified Persons") against, all taxes, assessments, fees, withholdings and other governmental charges of any nature whatsoever, including, without limitation, penalties and interest (all such taxes, assessments, fees, withholdings, governmental charges, penalties and interest being hereinafter called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or any Unit in whole or in part on account of, or with respect to, this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acceptance or rejection of the Units or any portion thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, transfer of title, operation, maintenance, repair, condition, sale, return, or other disposition of the Units or any portion thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder: (i) for any taxes imposed on or measured by any fees or compensation received by the Trustee; and (ii) for any Federal, state or local taxes measured by net income based upon the Trustee's receipt of payments provided for herein (other than payments due the Trustee under this § 6 for which the Trustee is entitled to a corresponding deduction in the calculation of its net income) and franchise and value added taxes which are in lieu of such net income taxes. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within ten days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; provided, however, that if any Taxes are being contested in accordance with the sixth paragraph of this § 6, any payment shall be made at the time therein provided.

In the event that the Trustee shall become obligated to make any payment to the Builder, RMC or the Vendor or otherwise pursuant to any corresponding provision of the CSA not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Trustee as will enable the Trustee to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Trustee and the Vendor in such Units, as shall be satisfactory to the Trustee and the Vendor; provided, however, that the Trustee shall, with respect to any state or political subdivision thereof of the United States of America, file such returns, statements and reports relating to sales or use taxes, and taxes, fees and charges on or measured by the Trustee's earnings or gross receipts arising from the Units, or the value added by the Trustee thereto, as the Lessee shall determine are required to be filed, and as shall be prepared by the Lessee, and shall remit the amount thereof upon payment by the Lessee to the Trustee (such payment to be made promptly upon demand by the Trustee therefor) of such taxes, fees and charges except as provided above. To the extent that the Trustee has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Trustee hereby authorizes the Lessee to act in the name of the Trustee and on its behalf; provided, however, that the Lessee shall indemnify and hold the Trustee (in both its individual and fiduciary capacities) harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Trustee, submit to the Trustee copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Trustee of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Trustee reasonably may require to permit its compliance with the requirements of taxing jurisdictions.

If any taxing authority shall assert liability for any Taxes or propose an increase in the liability of any Indemnified Person for any such Taxes (such assertion or such proposed increase being hereinafter called a "Claim"), indemnification for which would be required under this § 6, the Indemnified Person will notify the Lessee within a reasonable time of such Claim in writing. If the Lessee delivers to such Indemnified Person written notice of its desire to

contest such Claim within 30 days after receipt of notice from such Indemnified Person, such Claim will be contested in accordance with this paragraph, except to the extent such Claim represents amounts payable to the Vendor under Article 6 of the CSA. If reasonably requested by the Lessee in writing and upon receipt of an indemnification reasonably satisfactory to the Indemnified Person, then the Trustee will permit the Lessee to contest such claims under Article 6 of the CSA in accordance with the rights of the Trustee thereunder; provided, however, that such contest shall not adversely affect the right, title and interest of the Trustee in the Units and the Lease. Such Indemnified Person will cooperate with any reasonable request made by the Lessee in connection therewith; provided, however, that such Indemnified Person may in its sole discretion determine in what court or other forum such contest will be conducted and whether such contest will proceed by payment of the Taxes in contemplation of a suit for refund, and such Indemnified Person shall not be required to take any action pursuant to this paragraph unless and until the Lessee shall have agreed to indemnify such Indemnified Person in a manner satisfactory to such Indemnified Person for any liability or loss which such Indemnified Person may incur as a result of contesting the validity of any Claim and shall have agreed to pay such Indemnified Person on demand all costs and expenses which such Indemnified Person may incur in connection with contesting such Claim (including fees and disbursements of counsel). If in any such contest the decision is made to pay the Taxes and sue for a refund, the Lessee will advance to such Indemnified Person on an interest-free basis sufficient funds to pay the Taxes which are to be contested. Upon receipt by any Indemnified Person of a refund of any Taxes paid by the Lessee pursuant to this paragraph, the amount of such refund and any interest paid to such Indemnified Person with respect thereto shall be paid to the Lessee forthwith upon receipt by such Indemnified Person.

The Lessee covenants and agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof, shall be equal to the amount of payment otherwise required hereunder.

In the event that the Lessee becomes liable for the payment or reimbursement of any Taxes pursuant to this § 6,

such liability shall continue, notwithstanding the expiration of this Lease, until all such Taxes are paid or reimbursed by the Lessee.

§ 7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE

7.1. Definition of Casualty Occurrence; Payments.

In the event that any Unit of Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to § 14 or 17 hereof, or RMC's Purchase Price of any Unit shall have been refunded by the Builder of such Unit pursuant to the terms of its patent indemnity therefor or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of this Lease or during any renewal term hereof (such occurrences being hereinafter called "Casualty Occurrences"), the Lessee shall promptly and fully notify the Trustee and the Vendor with respect thereto by providing an officer's certificate as to such Occurrence. On the next succeeding rental payment date (each such date being hereinafter called a "Casualty Payment Date"), the Lessee shall pay to the Trustee a sum equal to the Casualty Value (as defined in § 7.5 hereof) of any such Unit as of such Casualty Payment Date, plus the rental in respect of such Unit accrued as of such rental payment date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Trustee shall be entitled to recover possession of such Unit.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the term of this Lease, in which event the Lessee shall promptly and fully notify the Trustee

with respect thereto and pay the Trustee, as the Casualty Value therefor, an amount equal to 22.2297% of the Trustee's Purchase Price of such Unit. Following such payment, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value and any balance of such payments shall be the property of the Trustee. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, then the Lessee shall dispose of such Unit as agent for the Trustee, and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value, and the balance of such proceeds shall be promptly paid to the Trustee. In the event such Unit shall be returned by the governmental entity following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, such Unit shall be returned by the Lessee to the Trustee in the manner provided in § 17 hereof.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the original or extended term hereof and before such Unit shall have been returned in the manner provided in § 17 hereof, the Lessee shall promptly and fully notify the Trustee with respect thereto and pay to the Trustee an amount equal to the Casualty Value of such Unit, which shall be 22.2297% of the Trustee's Purchase Price of such Unit (unless such termination occurs after the term of this Lease has been extended pursuant to § 16 hereof, in which case the amount of such Casualty Value shall be as agreed upon between the Trustee and the Lessee at the time of such extension). Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Trustee shall be entitled to recover possession of such Unit.

7.2. Requisition by United States Government. In the event of the requisition for use by the United States Government of any Unit for a period which does not exceed the term of this Lease or for an indefinite period (except where deemed a Casualty Occurrence pursuant to the last paragraph of § 7.1 hereof), all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Trustee or the Lessee from the United States Government for the use of such Unit during the term of this

Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

7.3. Lessee Agent for Disposal. The Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of the Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Trustee, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit and shall pay any excess to the Trustee.

7.4. Payments After Expiration of Lease. If the date upon which the making of the payment by the Lessee in § 7.1 hereof in respect of any Unit is required as aforesaid shall be after the term of this Lease or any renewal term thereof in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term.

7.5. Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Trustee's Purchase Price of such Unit as is set forth in Appendix B hereto opposite the rental payment date next succeeding the actual date of such Casualty Occurrence, or if there is no such rental payment date, the last rental payment date; but in no event shall such amount be less than the "Casualty Value" (as defined in paragraph 7.3 of the CSA) as of such rental payment date.

7.6. No Release. Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

7.7. Insurance To Be Maintained. (1) The Lessee (i) will at all times prior to the return of the Units to the Trustee, at its own expense, cause to be carried and maintained public liability insurance with respect to third party personal injury and property damage (provided in no event shall such public liability insurance provide coverage of less than \$1,000,000 with respect to such third party personal injury and property damage) and (ii) may, at its option, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto; provided, however, that if, in the reasonable opinion of the Trustee or the Vendor,

the Lessee's or the Guarantor's financial condition has materially and adversely changed from its condition as of the date hereof such that property insurance on such Units is required to assure the Lessee's or the Guarantor's, as the case may be, ability to meet its obligations under this Lease, the Trustee or the Vendor shall so notify the Lessee and the Lessee shall promptly arrange for insurance to be carried and maintained on such Units. The Lessee will carry such insurance in such amounts, for such risks, with such deductibles and with such insurance companies, satisfactory to the Trustee and the Vendor and in any event consistent with prudent industry practice and at least comparable in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units. The proceeds of any such insurance shall be payable to the Vendor, the Trustee and the Lessee, as their respective interests may appear, so long as the indebtedness, if any, evidenced by the CSA shall not have been paid in full, and thereafter to the Trustee, and, so long as there is no Event of Default hereunder, the Lessee as their respective interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancelation or material change in coverage to the Owner and the Vendor, (ii) name the Trustee and the Vendor as additional named insureds as their respective interests may appear and (iii) waive any right to claim any premiums or commissions against the Owner, the Trustee and the Vendor. In the event such policies shall contain breach of warranty provisions such policies shall provide that in respect of the interests of the Trustee and the Vendor in such policies the insurance shall not require contributions from other policies held by the Trustee, the Owner or the Vendor and shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Trustee and the Vendor, respectively) and shall insure the Trustee and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Trustee or the Vendor, respectively). Prior to the first date of delivery of any Unit pursuant to the CSA, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this § 7, the Lessee shall deliver to the Owner (i) certificates issued by the insurer(s) for the insurance maintained pursuant to this § 7 and (ii) copies of any such insurance policies; provided, however, that if the delivery of any certificate is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the certificate upon receipt thereof.



(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Owner may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Owner for the cost thereof together with interest, on the amount of the cost to the Owner of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in § 19 hereof.

(3) Notwithstanding the above, the Owner may, at its option and expense, provide casualty insurance in amounts which are in excess of the Casualty Value and which policies may name the Owner as the loss payee. If the Owner exercises said option, then the Lessee will cooperate with the reasonable requests of the Owner so as to effect this insurance coverage; it being understood that any insured coverage under this subparagraph (3) is expressly within the Owner's option and in no way relieves the Lessee from any of its responsibilities under this § 7.7.

7.8. Insurance Proceeds and Condemnation Payments.  
If the Trustee shall receive (directly or from the Vendor) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Trustee shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to any Unit theretofore paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Trustee, provided that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value thereof, and accrued rentals in respect of such Units, to the Trustee. Provided no Event of Default shall have occurred and be continuing and Lessee shall have made payment of the Casualty Value thereof, the Lessee may retain all payments made to it in accordance with Rule 107 of the Interchange Rules of the Association of American Railroads. All insurance proceeds received by the Trustee (directly or from the Vendor) in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Trustee that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

## § 8. REPORTS

On or before March 31 in each year, commencing with the calendar year 1980, the Lessee will furnish to the Trustee and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and identification numbers of all Units then leased hereunder and covered by the CSA, the total number, description and identification numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Trustee or the Vendor may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5.1 hereof and by the CSA have been preserved or replaced and (c) further stating that the Lessee is in compliance under the Lease and has performed or has caused to be performed the required maintenance of the Units and that no event has occurred which with the lapse of time or notice or both would constitute an Event of Default. On or before March 31 and September 30 in each year, commencing with the calendar year 1980, the Lessee will furnish to the Trustee and the Vendor an accurate statement as to the location of the Units by state. The Trustee, the Vendor and the Owner shall each have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Trustee, the Vendor or the Owner may request during the continuance of this Lease.

## § 9. DISCLAIMER OF WARRANTIES

THE TRUSTEE DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE TRUSTEE DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Trustee and the Lessee, are to be borne by the Lessee; but the Trustee hereby irrevocably appoints and constitutes

the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Trustee and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Trustee may have against the Builder and/or RMC under the provisions of Items 3 and 4 of Annex A of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Trustee may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Trustee shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Trustee that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Trustee or the Vendor based on any of the foregoing matters.

#### § 10. LAWS AND RULES

10.1. Compliance. The Lessee agrees, for the benefit of the Trustee and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Trustee

or the Vendor, adversely affect the property or rights of the Trustee or the Vendor under this Lease or under the CSA.

10.2. Reports by Trustee. The Lessee agrees to prepare and deliver to the Trustee and the Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Trustee and the Vendor) any and all reports (other than income tax returns) to be filed by the Trustee with any Federal, state or other regulatory authority by reason of the ownership by the Trustee or the Vendor of the Units or the leasing thereof to the Lessee.

## § 11. MAINTENANCE

11.1. Units in Good Operating Order. The Lessee has agreed that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the interchange rules of the American Association of Railroads or other applicable regulatory body, and in at least the same condition as other similar Equipment owned or leased by the Lessee. Upon the expiration of the term of this Lease, the maintenance logs, if any, kept by the Lessee shall be turned over to the Trustee.

11.2. Additions and Accessions. (1) Except as set forth in §§ 10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are made in order to comply with § 11.2(2) hereof.

(2) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of its agreements contained in § 11.2(1) hereof, (ii) the cost of which is included in the Trustee's Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the

Units or (iv) which are required for the operation or use of such Unit in railroad interchange by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Trustee and the Vendor as their respective interests may appear in the Unit itself.

## § 12. INDEMNIFICATION

12.1. Indemnified Persons. The Lessee shall pay, and shall protect, indemnify and hold harmless the Trustee (in both its individual and fiduciary capacities), the Owner, the Vendor and any assignee thereof, and their respective successors, assigns, agents and servants ("Indemnified Persons"), from and against any and all causes of action, suits, penalties, claims, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses (including without limitation attorneys' fees and expenses of any Indemnified Person) relating thereto) in any way relating to or arising, or alleged to arise out of this Lease, the CSA or the Units, including without limitation those in any way relating to or arising or alleged to arise out of: (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent and other defects whether or not discoverable by the Trustee, the Vendor or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, except to the

extent any such violation arises from the gross negligence or wilful misconduct of the Trustee; or (vii) any claim arising out of any of the Trustee's obligations under the Lease Assignment or the Vendor's retention of a security interest under the CSA or the Lease Assignment or the Participation Agreement, except to the extent such claim arises from the gross negligence or wilful misconduct of the Trustee. The Lessee shall be obligated under this § 12.1, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including, without limitation, attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any indemnification payment under this § 12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States of America or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Trustee each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 12 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the matter against which indemnity has been given. After an Indemnified Person has been fully indemnified with respect to a claim pursuant to this § 12, such Indemnified Person hereby assigns to the Lessee its rights to proceed against all persons

other than Indemnified Persons as to such claim. The Lessee shall have the right to control the prosecution and defense of each claim involving such third parties, and each Indemnified Person shall cooperate reasonably with prosecution thereof. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 12.1 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made. Nothing in this § 12.1 shall constitute a guarantee by the Lessee of the CSA Indebtedness of the Trustee under the CSA or a guarantee of the residual value of any Unit.

12.2. Indemnification of RMC and Builder. The Lessee further agrees to indemnify, protect and hold harmless RMC and the Builder as third party beneficiaries hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against RMC or the Builder because of the use in or about the construction or operation of any Units of the Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder hereunder or under the CSA.

12.3. Survival. The indemnities contained in this § 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this § 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

### § 13. DEFAULT

13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal thereof, one or more of the following events (each such event being

herein sometimes called an "Event of Default") shall occur:

(A) (1) default shall be made in payment of any amount provided for in § 3 hereof, and such default shall continue for 5 days; or (2) default shall be made in payment of any amount provided in § 7 or 17 hereof, and such default shall continue for 15 days after written notice from the Trustee or the Vendor to the Lessee thereof;

(B) the Lessee or the Guarantor shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

(C) default shall be made in the observance or performance of any other covenant, condition or agreement on the part of the Lessee or the Guarantor contained herein, in the Participation Agreement or the Indemnity Agreement (as defined in the Participation Agreement) and such default shall continue for 20 days after written notice from the Trustee or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(D) any representation or warranty made by the Lessee or the Guarantor herein, in the Participation Agreement or the Indemnity Agreement or in any certificate or statement furnished to the Trustee or the Owner pursuant to or in connection with any such agreement proves untrue in any material respect as of the date of issuance or making thereof;

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as may hereafter be amended, shall be filed by or against the Lessee or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee and the Guarantor under this Lease and the Consent (as defined in the CSA) shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 90 days after such petition shall have been filed, whichever shall be earlier;



(F) any other proceedings shall be commenced by or against the Lessee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee or the Guarantor hereunder or under the Consent), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee and the Guarantor under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or the Guarantor or for the property of the Lessee or the Guarantor in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 90 days after such proceedings shall have been commenced, whichever shall be earlier;

(G) the Vendor shall not be entitled to apply the rental payments of this Lease pursuant to the Consent;

(H) the Lessee shall cease to be a wholly owned subsidiary of the Guarantor; or

(I) the Lessee shall default in the maintenance of public liability insurance described in § 7.7 hereof;

then, in any such case, the Trustee, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Trustee may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee

may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Trustee shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as liquidated damages for loss of the bargain and not as a penalty whichever of the following amounts that the Trustee, in its sole discretion shall specify, (i) the sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit, such present value to be computed on the basis of a 7.17% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Trustee reasonably estimates to be obtainable for each Unit during such period, such present value to be computed on the basis of a 7.17% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value applicable on the rental payment date on or next preceding the date of termination over the amount the Trustee reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Trustee shall have sold any Unit, the Trustee, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with respect to such Unit, may,

if it shall so elect, demand that the Lessee pay the Trustee and the Lessee shall pay to the Trustee on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit applicable on the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

13.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Trustee shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

13.3. Failure To Exercise Rights Is Not Waiver. The failure of the Trustee to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. Notice of Event of Default. The Lessee agrees to furnish the Trustee, the Owner and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this § 13.4, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

#### § 14. RETURN OF UNITS UPON DEFAULT

14.1. Return of Units. If this Lease shall terminate pursuant to § 13 hereof or pursuant to Article 16 of

the CSA, the Lessee shall forthwith deliver possession of the Units to the Trustee. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the interchange rules of the American Association of Railroads or other applicable regulatory body, and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 11 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 11, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) and at the usual speed place such Units upon such storage tracks as the Trustee reasonably may designate;

(b) cause such Units to be stored on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Trustee; and

(c) cause the same to be transported to any reasonable place as directed by the Trustee.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Trustee and, if received by the Lessee, shall be promptly turned over to the Trustee (and the obligation of the Lessee hereunder to pay the amounts referred to in § 13.1(A)(1) hereof shall be reduced by any such amounts

turned over to the Trustee). In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 30 days after such termination, the Lessee shall, in addition, pay to the Trustee for each day thereafter an amount equal to the amount, if any, by which that percentage of the Trustee's Purchase Price of such Unit for each such day obtained by dividing the basic lease rate as set forth in § 3.1 hereof for each quarterly payment for such Unit by 90 exceeds the actual earnings received by the Trustee on such Unit for each such day; such payment shall not offset the obligation of the Lessee to redeliver the Equipment pursuant to the first sentence of this paragraph.

14.2. Trustee Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 14, the Lessee hereby irrevocably appoints the Trustee as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be in possession of such Unit at the time.

## § 15. ASSIGNMENT, POSSESSION AND USE

15.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Trustee upon prior written consent of the Lessee, which consent shall not be unreasonably withheld. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment.

15.2. Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units. (1) So long as no Event of Default exists hereunder and no event of default exists under the CSA, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA. Without the prior written consent of the Trustee and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except as provided in paragraph (2) below of this § 15.2; and the Lessee shall not, without the prior written consent of the Trustee and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of paragraph (2) of this § 15.2. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a

lien, charge, security interest or other encumbrance (other than an encumbrance created by the Trustee or the Vendor or resulting from claims against the Trustee or the Vendor not related to the ownership of the Units or any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Trustee and the Vendor) upon or with respect to any Unit, including any accession thereto, or the interest of the Trustee, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(2) So long as no Event of Default exists hereunder and no event of default exists under the CSA, the Lessee shall be entitled to the possession and use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Units or to sublease the Units, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign, sublease or permit the assignment, sublease or use of any Unit predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. The Lessee may receive and retain compensation for the use of any of the Units from railroads or other entities so using such Units. Any sublease permitted by this paragraph may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; provided, however, that every such sublease shall be subordinate to the rights and remedies of the Vendor under the CSA and the Trustee under this Lease in respect of the Units covered by such sublease upon the occurrence of an event of default thereunder or an Event of Default hereunder.

## § 16. RENEWAL OPTIONS

16.1. Renewal for Successive Period. The parties hereto contemplate that at the end of the original term of

this Lease, the Trustee will hold the Units for release. Prior to the delivery of the Units pursuant to § 2 hereof, the Trustee will enter into an agreement (the "Option") with Tiger Financial Services, Inc. ("Tiger"), pursuant to which the Trustee will grant to Tiger the option to lease all but not fewer than all of the Units for a five-year term commencing at the end of the original term of this Lease on which terms as are set forth in the Option. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, if Tiger shall fail to exercise its option to lease the Units at the end of the original term of this Lease, then the Lessee may by written notice delivered to the Trustee not less than 180 days nor more than 270 days prior to the end of the original term of this Lease in respect of the Units still subject to this Lease, elect to extend such original term of this Lease in respect of all but not less than all the Units then covered by this Lease for a period of five years or such other time acceptable to both the Lessee and Trustee commencing on the scheduled expiration of such original term of this Lease, at a "Fair Market Rental" payable, in arrears, in quarterly payments on the month and day such rentals were payable for the Units in each year of such extended term. In the event of any such renewal, the Casualty Value payable in respect of a Casualty Occurrence involving any Unit shall be as set forth in Appendix B hereto.

16.2. Determination of Fair Market Rental.

(1) Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental.

(2) If, after 45 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Trustee and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an

independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

#### § 17. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit, and in any event not later than 90 days thereafter, the Lessee will, at its own cost and expense, deliver possession of such Unit to the Trustee upon such storage tracks as the Lessee may reasonably designate, or, in the absence of such designation, as the Trustee may select, and permit the Trustee to store such Unit on such tracks for a period not exceeding three months from the date of delivery pursuant to this § 17 and transport the same upon disposition of the Units, at any time within such three-month period, to any reasonable place, or to any connecting carrier for shipment, all as directed by the Trustee, the movement and storage of such Units to be at the expense and risk of the Lessee. Upon delivery pursuant to the preceding sentence, the Lessee shall be absolved of any



further responsibility for such Units. During any such storage period the Lessee will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Trustee or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to the Trustee pursuant to this § 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet the standards then in effect for railroad interchange in accordance with the interchange rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom any such device not so considered an accession. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. The Lessee shall be required to pay to the Trustee rent for each day any Unit is not so returned in an amount equal to .02612% multiplied by the Trustee's Purchase Price of such Unit for each day from the expiration of the Lease to the date such Unit is so returned. In the event any Unit is not assembled, delivered, stored and transported, as hereinabove provided, after such termination, the Lessee shall, in addition, pay to the Trustee for each day thereafter an amount equal to the amount, if any, by which that percentage of the Trustee's Purchase Price of such Unit for each such day obtained by dividing the basic lease rate as set forth in § 3.1 hereof for each quarterly payment for such Unit by 90 exceeds the actual earnings received by the Trustee on such Unit for each such day.

#### § 18. RECORDING

The Lessee, at its own expense, will cause this Lease, the CSA, the CSA Assignment and the Lease Assignment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will undertake the filing,

registering, deposit and recording required of the Trustee under the CSA. The Lessee in addition will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Trustee or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Vendor and the Trustee evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Trustee. This Lease, the CSA, the CSA Assignment and the Lease Assignment shall be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 prior to the delivery and acceptance hereunder of any Unit.

#### § 19. INTEREST ON OVERDUE RENTALS

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to the higher of (i) interest at 12% per annum or (ii) interest at 3% above the rate of The Chase Manhattan Bank, National Association, in effect from time to time for prime commercial loans of 90-day maturities to its most substantial commercial customers of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

#### § 20. TRUSTEE'S RIGHT TO PERFORM FOR THE LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Trustee may upon notice to the Lessee perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Trustee incurred in connection with such performance or compliance, together with interest on such amount in an amount equal to the higher of (i) interest at 12% per annum or (ii) interest at 3% above the rate of The Chase Manhattan Bank, National Association, in effect from time to time for prime commercial loans of 90-day maturities to its most substantial

commercial customers shall be payable by the Lessee upon demand, except as otherwise provided in this Lease. No such performance or compliance by the Trustee shall be deemed a waiver of the rights and remedies of the Trustee or any assignee of the Trustee against the Lessee hereunder.

## § 21. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered, telexed or mailed, first class, postage prepaid, addressed as follows:

(a) if to the Trustee, at 130 South LaSalle Street, Chicago, Illinois 60690, attention of Corporate Trust Department, with a copy to ITT Industrial Credit Company, 230 Hamm Building, St. Paul, Minnesota 55102, attention of Vice President-Director of Leasing; and

(b) if to the Lessee or the Guarantor, at the offices of the Guarantor at 200 Kiewit Plaza, Omaha, Nebraska 68131, attention of Director of Transportation;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at 135 South LaSalle Street, Chicago, Illinois 60690, attention of Corporate Trust Department.

## § 22. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

## § 23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement, the Trust Agreement and the Indemnity Agreement, this Lease exclusively and completely states the rights of the Trustee and the Lessee with respect to the leasing of the Units and super-

sedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Trustee and the Lessee.

#### § 24. THIRD PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owner, the Vendor, RMC, the Builder and the permitted successors and assigns of a party), and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

#### § 25. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

#### § 26. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

#### § 27. IMMUNITIES; NO RECOURSE

(1) No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Owner, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

(2) It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties and agreements herein made on the part of the financial institution acting as Trustee hereunder are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution, including its successors and assigns, or for the purpose or with the intention of binding said financial institution personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the Trustee solely in the exercise of the powers expressly conferred upon the Trustee as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee, except for wilful misconduct or gross negligence, or against the Owner on account of any representation, warranty or agreement herein of the Trustee, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

§ 28. AGREEMENTS FOR BENEFIT OF OWNER  
AND TRUSTEE'S ASSIGNS

All rights of the Trustee hereunder (including, but not limited to, its rights under §§ 6, 7, 9, 12, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Owner and any of the Owner's assigns under the Trust Agreement and the Trustee's assigns (including the Vendor).

§ 29. TERM TRUSTEE

Whenever the term Trustee is used in this Lease it shall apply and refer to the Trustee and any assignee of the Trustee (including, so long as any CSA Indebtedness under the CSA or interest thereon shall remain unpaid or any other obligation thereunder be continuing, the Vendor).

§ 30. GUARANTEE OF THE GUARANTOR

In consideration of inducing the Trustee to enter

into this Lease, the Guarantor hereby unconditionally guarantees the due and punctual performance of all obligations of the Lessee (including, without limitation, the payment of money and the specific performance of such obligations) under this Lease, the Consent, the Participation Agreement and the Indemnity Agreement and the transactions contemplated hereby and thereby (all such obligations being hereinafter collectively called the "Obligations"). In the event that the Lessee fails to perform any of the Obligations at the time such Obligation is required to be performed under the Lease, the Consent, the Participation Agreement or the Indemnity Agreement, the Guarantor shall forthwith perform, or cause to be performed, such Obligation.

The Guarantor agrees that the Obligations may be extended, altered or modified, in whole or in part, without notice or further assent from it, and that it will remain bound hereunder notwithstanding any extension, alteration or modification of any Obligation.

The Guarantor waives: (a) presentation to, demand of payment from and protest to the Lessee of any of the Obligations which are monetary in nature, and also waives notice of protest for nonpayment of any of the Obligations which are monetary in nature; and (b) presentation to, demand of performance from and protest to the Lessee of any of the Obligations which are nonmonetary in nature, and also waives notice of protest for nonperformance of any of the Obligations which are nonmonetary in nature. The obligations of the Guarantor hereunder shall not be affected by: (i) the failure of the Trustee or the Vendor to assert any claim or demand or to enforce any right or remedy against the Lessee under the provisions of this Lease, the Consent, the Participation Agreement or the Indemnity Agreement or any other agreement or otherwise; (ii) any extension or renewal of any thereof; (iii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Lease or of any other agreement; (iv) the failure of the Trustee or the Vendor to exercise any right or remedy against any other guarantor of the Obligations; or (v) the failure of the Guarantor to receive notice of any extension, alteration or modification of any Obligation, this Lease, the Consent, the Participation Agreement or the Indemnity Agreement or any future agreement relating to the Obligations.

The Guarantor further agrees that this undertaking constitutes a guarantee of payment when due (or performance when required, as the case may be) and not of collection.

The obligations of the Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including, without limitation, any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any Obligation, this Lease, the Consent, the Participation Agreement or the Indemnity Agreement or otherwise. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be discharged or impaired or otherwise affected by the failure of the Trustee or the Vendor to assert any claim or demand or to enforce any remedy under this Lease or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, wilful, as the result of actual or alleged force majeure, commercial impracticability or otherwise, in the performance of the Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of the Guarantor or which would otherwise operate as a discharge of the Guarantor as a matter of law.

The Guarantor further agrees that its undertakings hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations which are monetary in nature is rescinded or must otherwise be restored by the Trustee or the Vendor upon the insolvency, winding-up or reorganization of the Lessee or otherwise. In furtherance of the foregoing and not in limitation of any other right which the Trustee or the Vendor may have at law or in equity against the Guarantor by virtue hereof, upon failure of the Lessee to make any payment on any of the Obligations which are monetary in nature when and as the same shall become due as required under this Lease, the Consent, the Participation Agreement or the Indemnity Agreement, the Guarantor hereby promises, and will, upon receipt of written demand by the Trustee or the Vendor, forthwith pay, or cause to be paid, to the Trustee or the Vendor in cash an amount equal to all such Obligations to the Trustee or the Vendor, as the case may be. In addition, in furtherance of the foregoing and not in limitation of any other right which the Trustee or the Vendor may have at law or in equity against the Guarantor by virtue hereof, upon failure of the Lessee to perform any of the Obligations which are nonmonetary in nature when the same shall be required to be performed under this Lease, the Consent, the Participation Agreement or the Indemnity Agreement, the Guarantor hereby

promises, and will, upon receipt of written demand by the Trustee or the Vendor, forthwith perform strictly in accordance with the terms of this Lease, the Consent, the Participation Agreement or the Indemnity Agreement, or cause to be so performed, for the Trustee and the Vendor all such Obligations required to be performed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

MHC, INC.,

by

\_\_\_\_\_  
President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

CONAGRA, INC.,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

EXCHANGE NATIONAL BANK OF  
CHICAGO, not in its individual  
capacity but solely as Trustee,

by

\_\_\_\_\_  
Authorized Officer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Authorized Officer



STATE OF NEBRASKA, )  
 ) ss.:  
COUNTY OF , )

On this            day of June 1979, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is a            of MHC, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF NEBRASKA, )  
 ) ss.:  
COUNTY OF , )

On this                    day of June 1979, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is a                    of CONAGRA, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF ILLINOIS,) ss.:  
COUNTY OF COOK, )

On this            day of June 1979, before me personally appeared           , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of EXCHANGE NATIONAL BANK OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

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Notary Public

[Notarial Seal]

My Commission expires

# APPENDIX A TO LEASE

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
100 Ton 4,750 cubic foot covered hopper grain cars	LO	Builder's No. 1027 dated February 5, 1979	Butler, Pa.	200	CAGX 100- CAGX 299	\$42,167.50	\$8,433,500	July-August 1979, at Butler, Pa.

## APPENDIX B TO LEASE

## CASUALTY VALUES

<u>Casualty Payment Dates</u>	<u>Percentage of Trustee's Purchase Price*</u>
0	106.26145
1	107.06912
2	107.75175
3	108.17164
4	108.53433
5	108.84627
6	108.89839
7	109.26165
8	109.37851
9	109.44741
10	109.46146
11	109.40157
12	109.29539
13	109.14112
14	108.93398
15	108.65858
16	108.33198
17	107.96856
18	107.54783
19	107.06587
20	106.53765
21	105.96661
22	105.36202
23	104.71470
24	104.03693
25	103.26810
26	102.58825
27	101.80858
28	101.01925
29	100.15970
30	99.29070
31	98.38456
32	97.44976
33	96.48575
34	95.49392
35	94.46523
36	94.41114
37	92.32905

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\* As defined in paragraph 4.1 of the CSA.

## APPENDIX B TO LEASE (cont'd)

## CASUALTY VALUES

<u>Casualty Payment Dates</u>	<u>Percentage of Trustee's Purchase Price*</u>
38	91.22079
39	90.07999
40	88.81303
41	87.71948
42	86.50138
43	85.25271
44	83.97939
45	82.68108
46	81.35992
47	80.00978
48	78.63671
49	77.24047
50	75.82313
51	74.38127
52	72.91911
53	71.43422
54	69.92842
55	68.40529
56	66.85855
57	65.28808
58	63.69527
59	62.08281
60	60.44567
61	58.58364
62	57.09777
63	55.38970
64	53.65582
65	51.89595
66	50.11054
67	48.29963
68	46.46216
69	44.59752
70	42.70629
71	40.79974
72	40.87880
73	36.94450
74	34.96641
75	33.03127
76	31.05439
77	29.06698
78	27.06729
79	25.04870
80	23.02159

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\* As defined in paragraph 4.1 of the CSA.

ANNEX D  
to  
Conditional Sale Agreement

ASSIGNMENT OF LEASE AND AGREEMENT dated as of May 1, 1979 (this "Assignment"), by and between EXCHANGE NATIONAL BANK OF CHICAGO, acting solely in its capacity as Trustee (the "Trustee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with ITT INDUSTRIAL CREDIT COMPANY OF TENNESSEE, a Tennessee corporation (the "Owner"), and LA SALLE NATIONAL BANK, a national banking association, as Agent (the "Vendor"), under a Participation Agreement dated as of the date hereof.

WHEREAS the Trustee is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with PULLMAN INCORPORATED (Pullman Standard Division), a Delaware corporation (the "Builder"), and RAILWAY MARKETING CORPORATION, a Delaware corporation ("RMC"), providing for the sale to RMC by the Builder, and the conditional sale to the Trustee by RMC of such units of railroad equipment (the "Units") described in the Annex B thereto as are delivered to and accepted by RMC and the Trustee, respectively, thereunder;

WHEREAS the Trustee, MHC, INC., an Oregon corporation (the "Lessee"), and CONAGRA, INC., a Delaware corporation (the "Guarantor"), have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the leasing by the Trustee to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Trustee under the CSA and as an inducement to the Vendor to invest in the CSA Indebtedness (as defined in paragraph 4.3(b) of the CSA), the Trustee agrees to assign for security purposes certain of its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Trustee hereby assigns, transfers and sets over unto the Vendor, as collateral security for the pay-

ment and performance of the obligations of the Trustee under the CSA, all the Trustee's right, title and interest, powers, privileges and other benefits under the Lease (except any amounts of indemnity payable to the Trustee in its individual capacity), including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Trustee from the Lessee and the Guarantor under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Trustee is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Trustee hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Trustee or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Trustee is or may become entitled under the Lease and to enforce compliance by the Lessee and the Guarantor with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee and the Guarantor for the account of the Trustee pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Trustee under the CSA, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Trustee on the same date such Payment is applied to satisfy such obligations of the Trustee, by check mailed to the Trustee on such date or, upon written request of the Trustee, by bank wire to the Trustee at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Trustee. If the Vendor shall not receive any rental payment under § 3.1 of the Lease when due, the Vendor shall notify the Trustee at the address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Trustee shall not affect the obligations of the Trustee hereunder or under the CSA.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass,

or in any way affect or modify the liability of the Trustee under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Trustee to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Trustee or persons other than the Vendor.

3. The Trustee will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides is to be performed by the Trustee; without the written consent of the Vendor, the Trustee will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee or the Guarantor thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee or the Guarantor, as the case may be, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Trustee agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Trustee does hereby constitute the Vendor the Trustee's true and lawful attorney, irrevocably, with full power (in the name of the Trustee, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Trustee is or may become entitled, to enforce compliance by the Lessee and the Guarantor with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Trustee under the CSA, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Trustee. Promptly following such full discharge and satisfaction, the Vendor agrees that it will advise the Lessee and the Guarantor in writing that all sums due from the Trustee under the CSA have been fully discharged and satisfied and instruct the Lessee and the Guarantor that no further payments under the Lease are to be made to the Vendor.



6. The Trustee will pay and discharge any and all claims, liens, charges, security interests or other encumbrances (other than those created by the CSA) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Trustee or the Owner, or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the CSA or the Lease (but including tax liens arising out of the receipt of the rentals and the other payments under the Lease and any other proceeds from the Units) which, if unpaid, might become a claim, lien, charge, security interest or other encumbrance on or with respect to the Lease or such rentals or other payments equal or superior to the Vendor's interest therein, unless the Trustee or the Owner shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect such interest of the Vendor.

7. The Trustee will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure, the interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

10. The Trustee shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or mailed to the Vendor at its address set forth in Article 22 of the CSA, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Trustee that the Vendor will not, so long as no event of default under the CSA has occurred and is continuing, exercise or

enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Trustee to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, and that, subject to the terms of the Lease and the CSA, the Trustee may, so long as no event of default under the CSA has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges and remedies arising out of § 13.1(a) of the Lease; provided, however, that the Trustee shall not, without the prior written consent of the Vendor, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges and remedies arising out of § 13.1(b) of the Lease.

12. It is expressly understood and agreed by and between the parties hereto, anything in this Agreement to the contrary notwithstanding, that each and all of the representations, warranties and agreements in this Agreement made on the part of the financial institution acting as Trustee hereunder are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution, or for the purpose or with the intention of binding said financial institution personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the said financial institution solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the said financial institution (except for wilful misconduct or gross negligence) or the Owner on account of any representation, warranty or agreement herein of the Trustee or the Owner either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for the satisfaction of the same.

13. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Vendor shall be deemed to be the original and all other

counterparts shall be deemed to be duplicates thereof. It shall not be necessary that any counterpart be signed by all parties so long as each party shall sign at least one counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

EXCHANGE NATIONAL BANK OF CHICAGO,  
as Trustee,

by

\_\_\_\_\_  
Authorized Officer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

LA SALLE NATIONAL BANK,

by

\_\_\_\_\_  
R. K. Weber  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
M. Mikesic  
Trust Officer  
and Assistant Secretary

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this                    day of June 1979, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of EXCHANGE NATIONAL BANK OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said bank and that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this day of June 1979, before me personally appeared R. K. WEBER, to me personally known, who, being by me duly sworn, says that he is a Vice President of LA SALLE NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the seal of said national banking association and that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Notary Public

[Notarial Seal]

My Commission expires

## CONSENT AND AGREEMENT

The undersigned, MHC, INC., an Oregon corporation (the "Lessee"), and CONAGRA, INC., a Delaware corporation (the "Guarantor"), the lessee and the guarantor named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), each hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities (except any amounts of indemnity payable to the Trustee in its individual capacity) and other moneys provided for in the Lease (which moneys are hereinafter called the "Payments") due and to become due under the Lease directly to LA SALLE NATIONAL BANK, as Agent (the "Vendor"), the assignee named in the Lease Assignment, at 135 South LaSalle Street, Chicago, Illinois 60690, attention of Corporate Trust Department (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee or the Guarantor under the Lease as though the Vendor were named therein as the Trustee;

(3) the Vendor shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee or the Guarantor the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor, shall be deemed to be a contract under the laws of

the State of Illinois and, for all purposes, shall be construed in accordance with the laws of said State.

MHC, INC.,

by

\_\_\_\_\_  
President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

CONAGRA, INC.,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary